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6 The Honorable Marsha J. Pechman  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THOMAS E. HORNISH and SUZANNE J. )  
HORNISH JOINT LIVING TRUST; TRACY and )  
BARBARA NEIGHBORS; ARUL MENEZES and ) No. 15-cv-00284 MJP  
LUCRETIA VANDERWENDE; LAKE )  
SAMMAMISH 4257 LLC; HEBERT MOORE )  
and EVELYN MOORE; AND EUGENE MOREL ) ANSWER AND COUNTERCLAIM OF  
AND ELIZABETH MOREL, ) DEFENDANT KING COUNTY  
)  
Plaintiffs, )  
)  
vs. )  
)  
KING COUNTY, a home rule charter county, )  
)  
Defendant. )  
)

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16  
17 COMES NOW Defendant King County, by and through its attorneys of record, both to  
18 answer Plaintiffs' Amended Complaint for Declaratory Relief (Dkt. 31; "complaint") and to  
19 counterclaim as set forth below. In answer to Plaintiffs' complaint, Defendant admits, denies and  
20 alleges as set forth below. Each and every allegation contained in Plaintiffs' complaint not  
21 expressly admitted in full below is denied. The paragraph numbers in the Answer below correspond  
22 to the paragraph numbers in Plaintiffs' complaint:  
23

## **NATURE OF ACTION**

1. Answering paragraph 1, King County is presently without sufficient information to answer the allegations of fact contained in this paragraph and therefore denies the same.

## 2. Answering paragraph 2, deny.

3. Answering paragraph 3, King County is presently without sufficient information to answer the allegations of fact contained in this paragraph and therefore denies the same.

4. Answering paragraph 4, King County is presently without sufficient information to answer the allegations of fact contained in this paragraph and therefore denies the same.

## 5. Answering paragraph 5, admit.

6. Answering paragraph 6, the decision of the STB requires no answer and speaks for itself. To the extent that paragraph 6 contains additional allegations of fact, King County denies the same.

7. Answering paragraph 7, the decision of the STB requires no answer and speaks for itself. King County denies all other factual allegations in this paragraph, including the assertion that there was any “conversion” of the East Lake Sammamish Rail Corridor (ELSRC or “corridor”).

8. Answering paragraph 8, King County admits that it entered into various agreements with BNSF and TLC, but denies Plaintiffs' characterizations of those agreements. King County further admits that it has established a trail along the rail corridor and removed the railroad tracks, but denies all remaining allegations in the paragraph.

9. Answering paragraph 9, Plaintiffs' state a legal conclusion for which no answer is required, but King County otherwise denies the factual allegations in this paragraph.

## 10. Answering paragraph 10, deny.

11. Answering paragraph 11, King County is presently without sufficient information to answer the allegations of fact contained in this paragraph and therefore denies the same.

12. Answering paragraph 12, Plaintiffs' state a legal conclusion for which no answer is required, but King County otherwise denies the factual allegations in this paragraph.

## THE PARTIES

13-18. Answering paragraphs 13-18, Plaintiffs' state various legal conclusions for which no answer is required. King County is otherwise presently without sufficient information to answer the allegations of fact contained in those paragraphs and therefore denies them.

19. Answering paragraph 19, admit.

## **JURISDICTION AND VENUE**

20. Answering paragraph 20, King County admits that jurisdiction to determine the allegations in the complaint (and King County's counterclaims) lies with this Court under both federal and state law. King County denies all other allegations in this paragraph.

21. Answering paragraph 21, King County admits that RCW 4.12.010 is the mandatory venue statute applicable to plaintiffs' action, that the portion of the ELSRC implicated by Plaintiffs' action is located in King County, and that defendant King County is located within the geographic boundaries of King County. To the extent that this paragraph includes any additional allegations of fact, King County denies the same.

## FACTS PERTINENT TO ALL CAUSES

22. Answering paragraph 22, King County admits that in the 19<sup>th</sup> and 20<sup>th</sup> centuries, various railroads acquired land and interests in land and constructed railroad lines in the vicinity of Lake Sammamish. To the extent that this paragraph contains different or additional

ANSWER AND COUNTERCLAIM OF DEFENDANT KING COUNTY (15-cv-00284 MJP) - 3

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1 allegations of fact, King County is presently without sufficient information to answer this  
2 paragraph and therefore denies the same.

3       23. Answering paragraph 23, King County admits the existence of a reported decision  
4 in *Beres* by Judge Horn, but denies that plaintiffs accurately or fully characterize Judge Horn's  
5 conclusions. King County specifically denies that the referenced opinion accurately  
6 characterizes Washington law, or establishes the proper scope of railroad easements under  
7 Washington law – especially where the Court expressly departs from Washington and Ninth  
8 Circuit precedent. To the extent that this paragraph includes any additional allegations, King  
9 County denies the same.

10       24. Answering paragraph 24, King County admits that the BNSF Railway Company  
11 owned and operated a railroad on the east side of Lake Sammamish for many years and that the  
12 corridor is currently rail banked. To the extent that Paragraph 24 of the Complaint contains other  
13 allegations, King County is presently without sufficient information to answer them and  
14 therefore denies the same.

15       25-30. Answering paragraphs 25 – 30, these paragraphs recite legal conclusions that do  
16 not require an answer. The federal interstate rail transportation statutes at 49 U.S.C. §10101 et.  
17 seq., and the National Trails System Act, 16 U.S.C. 1241 et. seq., and its implementing  
18 regulations, 49 C.F.R. Part 1152, speak for themselves. To the extent that paragraphs 25 through  
19 30 contain allegations of fact, King County denies the same.

20       31. Answering paragraph 31, the decision of the STB attached to Plaintiffs complaint  
21 as Exhibit H requires no answer and speaks for itself. To the extent that paragraph 31 contains  
22 additional allegations of fact, King County denies the same.

32. Answering paragraph 32, King County admits that the ELSRC is rail banked pursuant to the NITU, but denies Plaintiffs' assertion that the letter attached as Exhibit I is the trail use agreement (it appears to be merely a letter summarizing such agreement(s)). To the extent that paragraph 32 contains additional allegations of fact, King County denies the same.

33. Answering paragraph 33, King County denies the same.

## **COUNT I—DECLARATORY JUDGMENT**

34. Answering paragraph 34, King County hereby incorporates by reference its responses to paragraphs 1-34 of the complaint as though fully set forth herein.

35-37. Answering paragraphs 35-37, King County denies the same.

38. Answering paragraph 38, Plaintiffs' state a legal conclusion for which no answer is required, but King County otherwise denies the allegations in this paragraph.

39. Answering paragraph 39, King County denies the same.

# **KING COUNTY'S COUNTERCLAIM FOR QUIET TITLE AND DECLARATORY JUDGMENT**

Counterclaim ¶1. As Counterclaim Plaintiff, King County re-alleges its answers to ¶¶1-39 of the Complaint as if fully set forth herein.

Counterclaim ¶2. King County owns fee title or exclusive railroad easement rights characterized as a “quasi-fee” in the portions of the ELSRC that are adjacent to Plaintiff’s property.

Counterclaim ¶3. Plaintiffs, some or all, have interfered with King County's property rights in the ELSRC by erecting and maintaining various unauthorized improvements that impede King County's access to its property, its exclusive control, and prevent public enjoyment.

1 Counterclaim ¶4. Under RCW 7.28, title to any disputed portions of the corridor should  
2 be quieted in King County.

3 Counterclaim ¶5. Plaintiffs should be required to remove any unauthorized  
4 improvements erected and maintained within the ELSRC.

5 Counterclaim ¶6. Plaintiffs should be required to pay current and back rent and/or  
6 special use fees for all unauthorized uses of the ELSRC.

7 Counterclaim ¶7. The Court should enter declaratory judgment for King County, holding  
8 that the Trails Act preserves railroad property rights in rail banked corridors by preempting  
9 abandonment of those property rights; that when a railroad corridor is rail banked pursuant to  
10 the Trails Act, the railroad property rights are preserved and trail use becomes a new interim  
11 authorized use; that BNSF's rail banking of the ELSRC preserved BNSF's railroad  
12 property rights and allowed interim use of the corridor as a trail; and that King County, as the  
13 successor to BNSF's property rights enjoys the same exclusive control over the corridor as  
14 BNSF.

15 **ANSWER AND AFFIRMATIVE DEFENSES**

16 BY WAY OF FURTHER ANSWER and AFFIRMATIVE DEFENSES to plaintiffs'  
17 Complaint, and without admitting anything previously denied, King County asserts the following  
18 affirmative defenses against each plaintiff.

19 1. Plaintiffs, in whole or in part, have failed to state a claim upon which relief may  
20 be granted.

21 2. Plaintiffs have failed to join indispensable parties.

22 3. Plaintiffs, in whole or in part, have stated claims under Washington law that are  
23 preempted by federal law.

- 1 4. Plaintiffs, in whole or in part, have stated claims that are barred by the statute of
- 2 limitations.
- 3 5. Plaintiffs, in whole or in part, have stated claims that are barred by the doctrine of
- 4 laches.
- 5 6. Plaintiffs, in whole or in part, have stated claims that are barred by the doctrine of
- 6 waiver.
- 7 7. Plaintiffs, in whole or in part, have stated claims that fail because plaintiffs
- 8 acquiesced in the acts about which plaintiffs now complain.
- 9 8. Plaintiffs, in whole or in part, have stated claims that are barred by the doctrine of
- 10 estoppel.
- 11 9. Plaintiffs, in whole or in part, have stated claims that they, or their predecessors in
- 12 title, have previously released.
- 13 10. Plaintiffs, in whole or in part, are not the real parties in interest.
- 14 11. Plaintiffs, in whole or in part, lack standing to bring this action.

15 King County reserves the right to amend this Answer and assert additional affirmative defenses.

16 WHEREFORE, having answered Plaintiff's complaint, King County requests that this  
17 Court DISMISS Plaintiff's complaint with prejudice, GRANT King County's Counterclaims,  
18 and award Defendant King County its costs and reasonable attorney's fees, and award such other  
19 and further relief as this Court may deem just and equitable.

1 DATED this 28<sup>th</sup> day of August, 2015.

2 DANIEL T. SATTERBERG  
3 King County Prosecuting Attorney

4 By: s/ David J. Hackett  
5 DAVID HACKETT, WSBA #21236  
6 Senior Deputy Prosecuting Attorney

7 By: s/ H. Kevin Wright  
8 H. KEVIN WRIGHT, WSBA #19121  
9 Senior Deputy Prosecuting Attorney

10 By: s/ Peter G. Ramels  
11 PETER G. RAMELS, WSBA #21120  
12 Senior Deputy Prosecuting Attorney

13 By: s/ Barbara Flemming  
14 BARBARA A. FLEMMING, WSBA #20485  
15 Attorneys for Defendant King County

16 King County Prosecuting Attorney's Office  
17 500 Fourth Ave., 9<sup>th</sup> Floor  
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23 [barbara.flemming@kingcounty.gov](mailto:barbara.flemming@kingcounty.gov)

1  
**DECLARATION OF FILING AND SERVICE**  
2

3 I hereby certify that on August 28, 2015, I electronically filed the foregoing document  
4 with the Clerk of the Court using the CM/ECF system which will send notification of such filing  
5 to the following:  
6

7 Daryl A. Deutsch, WSBA # 11003  
8 Attorney for Plaintiff  
9 Rodgers, Deutsch & Turner, PLLC  
10 Three Lake Bellevue Drive, Suite 100  
11 Bellevue, WA 98005  
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20 [smith@swm.legal](mailto:smith@swm.legal)

21 I declare under penalty of perjury under the laws of the United States and the State of  
22 Washington that the foregoing is true and correct.  
23

24 DATED: August 28, 2015, at Seattle, Washington.

25  
26 *s/ Kris Bridgman* \_\_\_\_\_  
27 Kris Bridgman, Legal Secretary  
28 King County Prosecuting Attorney's Office  
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